

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 715 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1-5 No

JASHUMATIBEN VASANTLAL RANA

Versus

SUSHILABEN WD/O TRIBHOVANDAS P PATEL

Appearance:

MR PF ADHVARYU for Petitioner

MR NILESH A PANDYA for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 22/09/98

ORAL JUDGEMENT

This Civil Revision Application is directed against the judgement dated 9.2.1998 passed by the Extra Assistant Judge, Baroda, whereby the learned judge allowed the appeal of the plaintiff landlord and decreed the suit for recovery of possession.

2. The necessary facts are the plaintiff filed a suit for recovery of a residential house being Census No.

B-529 situated in Khadia Pole No. 2, Rajmahal Road, Baroda on the ground that the petitioner tenant has built a residential house in Uma Housing Co-operative Housing Society bearing No. B-29. It is also averred that though she has paid full amount of consideration of the said property from her source she has acquired the same in her husband's name as benami transaction. It is also averred that the petitioner-tenant is working as a teacher. Thus, according to the plaintiff the defendant has lost protection and is liable to vacate the suit premises under Section 13(1)(L) of the Bombay Rent Act. The tenancy was accordingly terminated vide notice dated 19.2.1998. The defendant filed written statement controverting the plaint allegations. It is averred that the house situated in Uma Housing Co-operative Society does not possess all the amenities. It is also averred that the said house is not suitable to meet the requirement of the family from the point of view of the distance from the place of service. The trial court dismissed the suit. However, the first appellate court reversed the finding and decreed the suit.

3 It is contended by the learned counsel that first appellate court has failed to consider that the premises acquired is not a suitable accommodation. It is also contended that the petitioner is suffering from serious ailment and the premises acquired in Uma Housing Co-operative Society is at far distance and as such is not suitable.

4. I have gone through the judgements of both the courts below. It is not in dispute that tenant has acquired alternate accommodation. The only question is whether the accommodation acquired is suitable or not, from the point of view of distance. The distance is only 3 to 4 km, which cannot be said to be much. The finding of fact does not call for interference, by this court, in its revisional jurisdiction.

In view of the aforesaid, I do not find any merit in this Civil Revision Application and the same is rejected. Rule discharged. Interim relief vacated. The petitioner is allowed three months time to vacate the premises on usual terms and conditions on filing a proper undertaking within a period of two weeks.

00000

[pkn]